MT LEGISLATIVE HISTORY

Chapter 60 1971

Bill H _____ (S) 17 Original bill & hist. ___C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	FEB 16	✓ C	Hearing Date(s)	JAN 11	✓ C
	_____	___C		JAN 12	✓ C
	_____	___C		JAN 19	✓ C
	_____	___C		JAN 25	✓ C
Date Out	FEB 16	✓ C		_____	___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Chap.	Senate Bill	House Bill	Title	Page
			1120 and repealing Section 41-1118, R.C.M. 1947; and providing an effective date.	445
52		122	An act to amend Section 32-1208, R.C.M. 1947, revising the monetary limits at which an accident must be reported from one hundred dollars ($100) to two hundred and fifty dollars ($250).	446
53		161	An act to authorize the highway patrol board to issue identification cards to persons over eighteen (18) years of age.	447
54		100	An act to amend Section 94-3527, R.C.M. 1947, providing exceptions for carrying concealed weapons.	448
55		120	An act to amend Section 53-421, R.C.M. 1947, revising the monetary limits at which an accident must be reported from one hundred dollars ($100) to two hundred and fifty dollars ($250).	449
56		121	An act to amend Section 53-422, R.C.M. 1947, revising the damage limit in determining the requirement of security from one hundred dollars ($100) to two hundred fifty dollars ($250).	450
57		178	An act to amend Sections 75-6207, 75-6208, 75-6213, R.C.M. 1947, relating to the employer contribution to the pension accumulation fund, to interest due on redeposit of contributions, to the retirement benefits and disability benefits paid by the teachers retirement system and further relating to the payment of interest when purchasing out-of-state service.	452
58		422	An act to amend Section 64-207.1, R.C.M. 1947, relating to the opportunity of a publisher of libelous or defamatory matter to correct the same, by adding cable television systems to the list of such publishers: repealing all acts and parts of acts in conflict herewith.	464
59		596	An act to amend Section 23-3318, R.C.M. 1947, by providing for filing of certificates of nomination by candidates for municipal offices; and providing an effective date.	465
60	13		An act to provide a period of ten years within which an action for damages arising out of certain services or work on improvements to real property must be commenced; and providing an effective date.	466
61	29		An act providing for the creation of a confidential relationship between student and school personnel.	467
62	80		An act to amend Sections 4-114 and 4-121, R.C.M., 1947, relating to the hours state liquor stores shall be open.	469
63	139		A bill to provide a guaranty association for all insurers, to protect the public from insurer insolvency and providing for assessment among association members under certain conditions.	470
64	148		An act to provide for control and regulation of the affairs of insurance holding companies; prescribe rules and regulations governing acquisition and disposal of insurance holding companies; subjecting domestic insurers to examination by the insurance department; providing for application to be made to the insurance commissioner to approve certain transactions; providing for judicial review; defining terms; and providing penalties; repealing Sections 40-5501 through 40-5508, R.C.M., 1947.	480
65	165		An act to amend Section 87-117, R.C.M., 1947, to increase the per diem pay of members of the employment security commission.	500
66	177		An act to amend Sections 11-1814 and 16-3705, R.C.M., 1947, to provide for the waiving of residency requirements for police officers, deputy sheriffs or marshals.	501
67	205		An act to amend the motor carrier act setting the fees required for filing various documents.	504
68	207		An act to amend motor carrier act, Title 8, Chapter 1, R.C.M., 1947, by adding a new subsection (a) allowing the railroad and public service commission to assess fines for	

SENATE JUDICIARY COMMITTEE MEETING-January 11, 1971

The meeting was called to order by the Chairman, Senator Gilfeather. All members were present.

Chairman Gilfeather discussed Senate Bill 32. Senator Turnage moved to amend Senate Bill 32, page 1, line 22 by inserting the word "mesne" before the word "conveyance" and to further amend Senate Bill 32 on line 22 following the word "conveyance" by inserting the punctuation "," and the words "devise or succession". Further amend Senate Bill 32, line 23, following the word "to" by inserting the words "or remains in".

Senator Turnage moved that the amendments be adopted. Motion carried and the amendments are adopted.
It was moved that Senate Bill 32, DO PASS, AS AMENDED. THE MOTION WAS CARRIED.
Senator Gilfeather said that Senate Bill 4 is to be further amended.

Senate Bill 7 is set for hearing on January 12.

Senate Bill 13 is set for hearing on January 19.

The secretary was instructed to notify Mr. Edward C. Alexander, Strain Building, Great Falls of the hearing of Senate Bill 13 for January 19.

Senate Bill 15 was given a DO PASS. THE MOTION WAS CARRIED.

Senate Bill 16 was set for Jan. 12.

Senate Bill 26 was given a DO PASS. THE MOTION WAS CARRIED.

Senate Bill 32 was to be given further amendment.

Re. Senate Bill 34, Senator Turnage said he would talk to Senator Thiessen about this bill.

The meeting adjourned.

SENATOR P. J. GILFEATHER, CHAIRMAN

SENATE JUDICIARY COMMITTEE MEETING--January 19, 1971

The meeting was called to order by the Chairman, Senator Gilfeather. All of the members were present. This meeting was held in the Law Library proper, because there were a number of persons coming for this hearing.

Chairman Gilfeather asked Mr. Jim Haughey to proceed with Senate Bill 13. Mr. Haughey, a proponent of the bill, explained it at some length. He then introduced Mr. William R. Lowe, a general contractor, who spoke in favor of the bill. The other proponents in the order in which they spoke, are: Mr. M. W. Crennen, member of the A.I.A.; Mr. A. T. Kersich, member of the A.S.C.E.; Mr. Willard Johnson, a member of the A.I.A.; Mr. John H. Morrison, member of the engineering firm of Morrison-Maierle; Mr. William E. Grabow, member of the A.I.A.; Mr. Gustav Stolz, Jr., of the Montana Tech. Council.

The Chairman said we would now hear the only opponent, Mr. Gene Huntley from Baker. Mr. Huntley spoke in opposition to the bill.

Senator Gilfeather then asked each member of the committee if he had any questions to ask concerning this bill. Some did have questions. Then Chairman Gilfeather spoke to Mr. Haughey about the Statute of Limitations and the two discussed this. Chairman Gilfeather asked the gentlemen if they had any further questions, he then thanked them and they left.

NOW THE COMMITTEE MEMBERS WENT INTO SESSION, taking up Senate Bill 7, which Senator Sheehy explained. Senator Hafferman MOVED THE AMENDMENT OF SENATE BILL 7. Senator Hafferman moved that SENATE BILL 7, AS AMENDED, DO PASS.

Senate Bill 140 was now brought up and explained by Senator Turnage. Senator Turnage MOVED THAT SENATE BILL 140 DO PASS.

Senate Bill 141, explained by Senator Turnage, and was MOVED by him THAT SENATE BILL 141 DO PASS.

Senate Bill 13 remained in committee, to be discussed further.

Senator P. J. Gilfeather, Chairman

SENATE JUDICIARY COMMITTEE MEETING - January 12, 1971

The meeting was called to order by the Chairman, Senator Gilfeather. All members of the committee were present.

The Chairman informed the committee that the following bills were in the committee at the present time: Senate Bills 4, 7, 13, 15, 16, 24, 26, 32 and 34.

Senator Hafferman introduced Senate Bill 7 and explained it.

Representative Laas of the House spoke briefly regarding this bill and stated he was neutral regarding it but was present only to answer some questions which the committee might have.

Also present were Mr. Donald A. Douglas and Mr. H. T. Buswell of the State Highway Commission, both of whom were opponents of the bill.

Mr. Peter C. Pauly of the Montana Contractors Association was also present at the hearing and took an "undecided" stand regarding the bill.

After discussion of this bill Senator Gilfeather told the opponents and the other two gentlemen present that the bill will probably be put in a sub-committee and some work done on it and possibly they will be called again if the committee decides to have another hearing on it. Senator Gilfeather then thanked the men for coming and all were excused, with the exception of Mr. Pauly, who remained for discussion of Senate bill 32.

Senate Bill 4 was discussed and it was moved by Senator Shoehy that on page 1, line 29, sub-section 5 be amended by striking the period and inserting inlieu thereof a semicolon, and further amend it by striking the word "or". Further amend Section 1 by inserting after the word "that" on line 30 the words "in addition to any other". Senator Moore moved that as amended, the Senate Bill 4 be PASSED. THE MOTION WAS CARRIED.

Senate Bill 32 was brought up and Senator Gilfeather said he thinks the bill should be in the House because it deals with taxation. He suggested the committee let the bill sit here until they hear from the House. It was moved by Senator Moore that this bill be prepared in an amended form and given to the House.

SENATE JUDICIARY COMMITTEE MEETING--January 25,1971

(Afternoon Session)

Page 2.

The meeting was called to order by the Chairman, Senator Gilfeather. There was a quorum present.

Senate Bill 13 was discussed as to amendments to be made. Senator Gilfeather made a SUBSTITUTE MOTION OF 20 years in line 15, Section 1, page 1, instead of 5 years. Senator Turnage suggested putting this bill aside for the time being. Senator Shea suggested that the above-referred to change be for 10 years rather than 20 years. Senator Hafferman made a MOTION THAT SENATE BILL 13 DO PASS, AS AMENDED. Senator Gilfeather(returning to the matter of length of years) said he thinks it should be 20 because he believes it should be one-half of the life of the building. He said he would go as low as 15 years but no less. Then Senator Gilfeather and Senator Sheehy discussed it further. Senator Gilfeather MADE A SUBSTITUTE MOTION FOR 15 years. After further discussion Senator Sheehy made a MOTION that Section 2, page 1 of the bill be AMENDED in line 19 by eliminating the word "five (5)" and inserting in lieu thereof the word "ten (10)". Further amend Section 1, page 1, line 11, by inserting after the words "to recover damages" the following words and punctuation:

"(other than an action upon any contract, obligation, or liability, founded upon an instrument in writing)";

Further amend Section 2, page 1, by inserting in line 19 of the original bill after the words "within the" the following:

"third, fourth, or"; and omitting in line 20, page 1, the words and figures "one (1) year" and inserting in lieu thereof the following: "three (3) years";

Further amend Section 3, by omitting the section in its entirety and by inserting in lieu thereof the following:

"Section 3. The limitation prescribed by this act shall not be asserted as a defense by any person who is in actual possession or control, as owner, tenant, or otherwise, at the time a right of action accrues."

Senator Gilfeather proposed the following amendment to Section 3, page 1, line 23, by eliminating the words "be available to" and inserting in lieu thereof the words "affect the responsibility of";

Further amend the title of the bill, page 1, line 4 by deleting the word "FIVE" and inserting in lieu thereof the word "TEN";

Further amend Section 1, page 1, line 15 by deleting the word and numeral "five (5)" and inserting in lieu thereof the word and numeral "ten (10)";

Further amend Section 1, page 1, line 15 by deleting the word "substantial";

Further amend Section 2, page 1, line 19 by deleting the words "fifth year" and inserting in lieu thereof the words "tenth year";

Further amend Section 2, page 1, line 19 by deleting the word "substantial";

Further amend Section 4, page 1, line 26 by deleting the word "substantial";

Further amend Section 4, page 1, line 28 by adding after the word "intended" the words "or when a completion certificate is executed, whichever is earlier".

Senator Turnage MOVED THAT SENATE BILL 13, AS AMENDED, DO PASS.

Senate Bill 39 was brought up to the committee and it was discussed at some length. No action was decided upon for it at this meeting.

Senate Bill 34 was taken up and it WAS MOVED BY SENATOR TURNAGE THAT SENATE BILL 34 DO NOT PASS. The committee was in agreement.

The meeting was adjourned, there being no further business.

SENATOR P. J. GILFEATHER, CHAIRMAN

JUDICIARY COMMITTEE

42nd Legislative Assembly

ill o.	Subject Matter	Date In	Hearing Date	Comments	Date Out	Committee Action	Final Action
HB 503	Pertains to commitment of mentally ill persons	2/1/71	2/6/71		2/9/71	DO PASS	KILLED
SB 4	Provides for rescission of contracts by buyers from door-to-door salesmen.	2/1/71	2/15/71		2/16/71	BE CONCURRED IN	GOVERNOR
B 472	Relates to redemption of city, town, county, & school district bonds	2/1/71	2/9/71		2/9/71	DO PASS	KILLED
B 475	Relates to elections upon question conerning creation of public liability	2/1/71	2/9/71		2/9/71	DO PASS	SIGNED BY GOVERNOR
SB 13	Provides period of 10 years within which action for damages must be commenced	2/3/71	2/16/71		2/16/71	BE CONCURRED IN	SIGNED BY GOVERNOR
SB 150	Provides that agreements entered into in Mont.						KILLED

February 16, 1971

JUDICIARY COMMITTEE

neeting was called to order in room 300 of the capitol at 9 on Tuesday, February 16 with chairman Jeffrey J. Scott iding. All members were present.

TE BILL 228 — Senator Drake introduced Mr. J. R. Richards representing the Montana Legal ices, who gave an explanation of this bill which relates to may sue without costs. There were no further witnesses and uestions were asked. The hearing on this bill was closed.

TE BILL 150 — Senator Drake gave an explanation of this bill, which would provide that ements in contracts actually entered into in Montana purporting hange the place that the contract is entered into to a state r than Montana are void and illegal. There were no further esses for this bill. No questions were asked and the hearing his bill was closed.

TE BILL 13 — Senator Jean Turnage introduced Jim hey, who spoke for the proponents on this bill, which would ide a period of ten years within which an action for damages ing out of certain services or work on improvements to real perty must be commenced. He gave a detailed explanation of s bill (See Exhibit A.) Mr. Peter Pauly, representing the tana Contractors Association, gave a statement endorsing this l. There were no opponents. Questions were asked and the ring on this bill was closed.

ATE JOINT RESOLUTION 7 — Senator William Hafferman, district 31, gave an explanation of this resolution, ch requests that the 42nd legislative assembly create an interim nt committee to conduct a comprehensive study of the laws re- ing to the probate procedure with a view to suggesting amend- ts that would modernize the probate code of Montana. There were further witnesses. No questions were asked and the hearing on s bill was closed.

EXECUTIVE SESSION

ATE BILL 140 — Mr. Scott moved to amend this bill on page 1, line 27 after the material "money," striking the material ", and" and inserting in lieu thereof material "and no claim contained in the complaint exceeds $1,000. motion carried. Mr. Hall moved that Senate Bill 140 BE CONCURRED AS AMENDED. Motion carried.

ATE BILL 228 — Mr. Parrish moved that Senate Bill 228 BE CONCURRED IN. Motion carried.

\TE BILL 150 — Mr. Hall moved that Senate Bill 150 BE NOT CONCURRED IN. Motion carried.

\TE JOINT RESOLUTION 7 — A motion was made that Senate Joint Resolution 7 be concurred in. Mr. umer made a substitute motion that this bill BE NOT CONCURRED Motion carried.

\TE BILL 13 — Mr. Greely moved that Senate Bill 13 BE CONCURRED IN. Motion carried.

\TE BILL 4 — Mr. Hall moved that the bill be amended on page 2, line 2, after the material be sold" by adding the material "by a person, firm or corpora- ı whose business consists of sales of merchandise on a door- loor basis or one-third or more of whose gross income results ı direct communication with individuals at their residences." ion carried. Mr. McNamer moved that this bill do not pass. Greely made a substitute motion that this bill BE CONCURRED \S AMENDED, including the amendments proposed by Mr. Mather. ; standing committee repoıt.) Motion carried - 7 for; 6 against.

Scott appointed the following members to carry the respective ıte bills in the House:

Senate Bill 140	Mr. Towe
Senate Bill 86	Mr. McNamer
Senate Bill 51	Mr. Murphy
Senate Bill 4	Mr. Greely
Senate Bill 13	Mr. Bennett

Hall moved that the committee reconsider their action on the ɔtion of SJR 7. Motion failed.

:e was a motion to adjourn. Motion carried.

Jeffrey J. Scott, Chairman

:e Omang, Secretary

MEMORANDUM

For the House Judiciary Committee Concerning

SENATE BILL 13

BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A PERIOD OF TEN (10) EARS WITHIN WHICH AN ACTION FOR DAMAGES ARISING OUT OF CERTAIN ERVICES OR WORK ON IMPROVEMENTS TO REAL PROPERTY MUST BE COMMENCED; ID PROVIDING AN EFFECTIVE DATE."

A statute of limitations is a law which limits the period of me within which one person may commence an action in court against other. Today there is a real need for a specific statute of mitations for actions arising out of the design and construction of ructures on land. The need is shown by the fact that in the last n years, thirty-seven of the fifty states have enacted such statutes.

Why Is A Statute Of Limitations Needed?

Under the present law there is no period of years after the sign and construction of a building or structure which finaly ends e potential liability of the architect, engineer, or builder. A wsuit may be started and judgment entered ten, twenty, or forty ars after completion.

The need for a statute of limitations in this field has developed er the last ten to fifteen years because of three major factors:

1. Changes in existing law by court decisions.
2. Rapid increase in the volume of litigation and in the size of claims arising out of design and construction, and
3. Impossibility of purchasing adequate liability insurance

for architects and engineers.

These factors will be discussed in order.

1. Changes in law by court decisions.

Until very recent years, lawsuits by a plaintiff against an architect or engineer with whom the plaintiff had no contractual dealings were barred by the doctrine called "privity of contract". The general rule was that, as a matter of law, an architect or engineer had no liability to third parties after he completed his work, since there was no privity of contract between the architect or engineer and the injured party. But in 1957, a New York court refused to apply the rule to a suit against an architect(1), and since then the decided trend of court decisions has been to deny the application of the privity rule or to make extensive exceptions to it. The result has been to greatly increase the number and the burden of lawsuits against architects and engineers.

Other court-made changes in the law have also increased the exposure of the construction professions. It formerly was the law that if a dangerous condition was open and obvious or readily discoverable, the liability for failure to correct it was that of the building owner, not that of the designer or builder. But in 1962 came one of the first decisions impairing the effect of that rule;(2) and in 1965 the rule was further restricted, if not repudiated, by the New York Supreme Court (3).

Cases involving the supervision of construction by architects also show a tendency of courts to impose stricter rules of liability (4).

The time at which a cause of action accrues is an extremely important factor in which the law has undergone much change in recent years by court decisions. The accrual dates chosen by various courts

may be lumped into three general periods: (1) the time of design and construction; (2) the time when damage first occurs; and (3) the time when an injury occurs or when the damage is discovered, or with reasonable diligence could have been discovered. While there is fairly recent authority for each of these periods, the trend of authority is to pick the date of injury or discovery as the date the cause of action accrues. It is highly probable that the Montana Supreme Court would select that date in a damage action against an architect or engineer.

These changing rules of law have greatly increased the potential liability of architects and engineers within the last fifteen years. The court decisions themselves present a strong case for a statute which will put some final limit on the time within which a claim must be made.

2. Volume of litigation and increase in size of claims.

It is common knowledge that the number of litigated claims for damages arising out of personal injuries has increased spectacularly in recent years. While this is true with respect to tort actions of all kinds, it is particularly true with respect to cases involving claims against professional people, architects and engineers as well as lawyers and doctors. Continental Casualty Company has been providing professional liability insurance for architects and engineers since 1957. During that time, ten thousand claims have been presented and of that number, almost half have been made within the last three years. Not only is the volume of this litigation increasing dramatically, but the size of the claims has skyrocketed, partly because of inflation and the increasing size of verdicts generally, but also because of the

increasing size and complexity of construction projects in these times.

3. Impossibility of purchasing adequate liability insurance protection.

Among the professions, the architects and engineers are in the unique position of not being able to purchase insurance coverage which will protect them against claims which are made in the future. The liability insurance furnished to lawyers and doctors, for example, covers not only claims made during the policy year but also claims which may be made at any time in the future even though the insured then no longer carries liability insurance. This means that the lawyer or doctor need only purchase and carry insurance for the years in which he is practicing his profession, as he will be defended against any claim which may arise in the future. However, the only insurance available to architects and engineers provides that a claim covered by the policy must be made within the policy year for which the insured has paid his insurance premium. Under this type of policy, the architect and engineer to protect himself against disastrous loss which might wipe out his life's savings and bankrupt him, must continue to purchase liability insurance for the rest of his life.

Only one insurance company, Continental Casualty Company, today writes professional liability insurance for architects and engineers on a nationwide basis. Nine companies have withdrawn from the architects' and engineers' professional liability market during the last ten years. No other liability insurance is available for these professional people except in a very few states by Sequoia and Pacific Indemnity, two very small domestic companies, and World Auxiliary, a

British company which writes some policies in a few states through a United States broker. A very few policies are being written by Lloyds of London; but liability insurance on a general basis is available only through Continental Casualty Company.

One special group of professional engineers cannot purchase liability insurance from any insurer for any premium. They are the engineers involved in the field called 'soils mechanics", which includes analysis and testing of soils and underground conditions on building sites.

Architects and engineers who design and supervise any public buildings, works or improvements of the state or of any county, city or school district in the state, are required by Montana law (Section 66-114 R.C.M. 1947), to "have an adequate errors and omissions insurance policy". Thus, from a practical standpoint all architects and engineers in Montana must purchase liability insurance, although the insurance which they can purchase is inadequate, and in one special field is unavailable. It is also becoming prohibitively expensive.

Skyrocketing Cost of Insurance Protection

Changes in the law by court decisions and increase in volume and size of claims is directly reflected in the extremely rapid increase in premiums for professional liability insurance in recent years. The premiums paid by an architectural or engineering firm are five times higher than they were in 1960, the sharpest increases having come in the last three years. An architect who paid a $444 premium in 1968 today pays $1,063 for the same insurance protection, even though the firm maintained its insurance coverage during all the

period and had no claims against it. A table showing premium history for an architectural firm with one professional and four technical personnel is attached. There is no end in sight for this spiraling and evermore rapidly increasing cost of even the inadequate protection presently available.

- - - - - - - - - - - - - - - - - -

Recent Developments in Statutes of Limitations for Design and Construction

In the last eight years, thirty-seven of the fifty states have enacted statutes of limitation covering the design and construction of improvements of real property similar to SB 13. A table of those states, showing the year of passage and the limitation period for each, is attached. In some of those states, particularly those with the longer periods of limitation, the statutory period commences with the completion of the services of the particular defendant rather than with the completion of the building project, and thus some of them start to run before the limitation period provided for in SBI3 would commence.

The real need for a statute of limitations for design and construction has developed within the last ten or fifteen years, and it is for that reason that the statutes in the thirty-seven states have been so recently enacted. Prior to about fifteen years ago, there was no substantial need for a special statute of limitations. Few claims ever went to court, and the architects and engineers were generally held liable only to persons with whom they had direct contractual dealings and not to third persons. The situation was drastically changed, however, within the last decade by the rising volume of litigation, the increasing liberality of court decisions and consequent changes in the law which imposed liability which had not

been previously recognized, and the unavailability of adequate insurance protection against the greatly increased number and size of claims. A pressing need for a specific statute is now obvious.

In the 1967 Montana legislative session, a special statute of limitations was defeated in the Senate on an adoption of the adverse committee report of the Senate Judiciary Committee. That bill applied only to actions arising out of services by licensed architects and engineers, and the Judiciary Committee (of which the undersigned was a member) saw no reason to distinguish between these professionals and others such as lawyers and doctors. Without expressing an opinion as to whether a statute of limitations relating to other professions is justified or needed, it is submitted that there is a sound basis for distinguishing between architects and engineers and other professional people and for the enactment of Senate Bill 13.

As pointed out above, liability insurance protection is available and adequate for lawyers and physicians (even though the premium cost has increased substantially in recent years). Lawyers and doctors still are protected by the rule of privity, which has recently been abolished as to architects and engineers and others in the construction business. There is a real distinction in the stability of the kinds of work done by lawyers and by architects and engineers. Lawyers still do fundamentally the same kinds of work they did fifty years ago. The work processes and the methods of solving legal problems are essentially unchanged. On the other hand, the construction industry is one of constant change. New construction methods and techniques are continually being developed. New standards are applied. New materials become available, and building codes are changed. In addition, the size and

complexity of building projects continually increase. In litigation involving the services of architects and engineers, it is the inclination of courts and juries to apply present standards and knowledge to fact situations that arose at an earlier date when the work in question was done. This is probably one of the basic reasons why liability insurance carriers are unwilling to furnish insurance against claims which arise in the future This factor increases the potential liability of architects and engineers as compared to other professions such as law and accounting. Finally, the fault or negligence of a lawyer, doctor or other professional man is ordinarily clearly separable from the work of others who may be at fault. However, the tort liability of an architect or engineer ordinarily arises out of some failure in a structure in which he was only one of a number of persons and agencies which contributed to the final result. The architect or engineer may provide only the designs, plans and specifications and possibly supervision or observation of a structural project, but those services are incorporated with materials and equipment furnished by suppliers and the construction of the project by the contractor and possibly a number of subcontractors. Finally, the building after completion is delivered to the owner, whose responsibility it is for maintenance. If a failure occurs some time later, it may be extremely difficult if not impossible to pinpoint the actual cause of the failure. These considerations present a strong case for a specific statute of limitations for design and construction.

The provisions of Senate Bill 13

Senate Bill 13, as amended in the Senate, would establish a limit of ten years after completion of an improvement to real property within which one may commence an action to recover damages arising out of design,

planning, supervision, inspection, construction or observation of construction of, or land surveying done in connection with an improvement to real property; but it would give in addition one full year to commence an action for an injury which occurred during the tenth year after completion. The limitation would not be available to an owner, tenant or person in actual possession and control of the improvement when the right of action arises so that the owner or occupier would still be responsible for proper maintenance and for discovery of defects. The term "completion" is defined to mean the degree of completion at which the owner can use the improvement for the purposes for which it was intended or when a completion certificate is executed, whichever is earlier. The bill would not extend present limitations for bringing of any actions, but it would provide a reasonable period for commencement of an action for which a right of action has already accrued by providing for an effective date of January 1, 1972.

This bill is similar to bills which have been enacted in many other states in the last eight years, although it provides a longer period and is somewhat simpler and more easily understandable than are many of the other statutes. It will be noted from the table of statutes of limitation attached that the statutory period varies widely. Eighteen of the states have periods of ten or more years, whereas nineteen have periods of ten years or less. The average period is eight years. Many of the longer periods, however, start to run upon completion of the services of the architect and engineer rather than upon substantial completion, and thus these statutory periods are somewhat shorter than would be suggested by casually reading the table of statutes.

It is considered that the limitation period of ten (or a maximum of eleven) years provided for in SB13 is a reasonable and fair period

within which to require that claims arising out of construction and design be commenced. In the overwhelming number of cases, any defects in design and construction will have become obvious long before the end of even a five-year period. Several years ago, the underwriter for Continental Casualty Company made a study of claims pending in five states, and by an analysis of 570 claims, selected at random, it was found that about 90% of the claims had been made within five years after completion of the project and 93% within six years after completion 99.6% were made within ten years. A tabulation of the results of the study is attached. It should be noted that in this study, the periods shown are the number of years after completion before the claim was actually made. Since it is well known that often several years elapse after an injury occurs before a claim is made, it is certain that if this table were based upon the periods after completion before claims could have been made by the claimants, even higher percentages of the claims would have been included in the shorter periods of years. It is thus clear that it is only the extremely rare claim which could not be made within the periods proposed in Senate Bill 13.

It is recognized that enactment of Senate Bill 13 in a very rare instance might preclude recovery against an architect or engineer, but it does not follow that the injured person would have no possibility of any recovery at all. His rights against the owner or occupier of the structure would not be affected, and the owner or occupier would still have the duty of proper maintenance and discovery of any defects. Structures do not fail without warning. A condition which may result in injury is observable, and by proper maintenance and inspection, the development of a dangerous condition can be ascertained and the condition repaired. It is for this reason that Senate Bill 13 excludes from its

operation the owners and occupants of the structures. It leaves the responsibility where it should rest, with the owner and occupant.

All statutes of limitation are based upon an ancient principle of law which holds that in establishing rules by which men may adjust and settle their differences, it is important and necessary that there be some point in time when rights and obligations must be settled, and after that time the aggrieved party is foreclosed from exercising his claim. All states have statutes of limitation, and Montana has a variety of them, none providing for longer periods than does SB13. There are sound, practical reasons for this well-established principle of law. Witnesses to a transaction in dispute may die or move away. Physical evidence may be lost. Memories grow hazy. And not the least reason for the rule is that as a matter of good business practice, a person should have some reasonable security that the slate has been wiped clean of past failures in connection with former transactions. Even a criminal charge for a felony (except murder or manslaughter) must be filed within five years. It is submitted that persons in the business and professions involved in designing, planning and constructing improvements to real property should at some point in time be assured they will no longer be haunted with the fear of facing an enormous claim which because of the passage of time cannot adequately be defended. That is the purpose of SB1

CONCLUSION:

In summary, we quote the following statement from the report of the U. S. House of Representatives Committee on the District of Columbia in its report on H.R. 6527, Ninetieth Congress, First Session:

> "In recent years there has been a substantial increase in the number of actions for the recovery of damages, contribution, or indemnity, for injury to property or persons or wrongful death against architects, engineers, and contractors, based upon a defective or unsafe condition of an improvement to real property.

"The District of Columbia, as was the case in the states, has no statute of limitations relating to such actions. Architects who design buildings or improvements to real property, engineers who design and install equipment, or contractors, who build the improvements under rigid inspection and conformity with building codes, may find themselves named as defendants in such damage suits many years after the improvement was completed and occupied.

"Comparatively, modern architecture, engineering, and construction, with the new techniques, technology, and methods, may give the appearance of defective or unsafe conditions to older structures which conditions may be used as a basis for such damage suits. In such cases, the architectural plans used may have been discarded, copies of building codes in force at the time of design or construction may no longer be in existence, and the persons who were individually involved may be deceased or may not be located. The purpose of the law is to provide a reasonable time and opportunity for a person who has suffered injury or damages to bring an action. To permit the bringing of such actions without any limitation as to time places the defendant in an unreasonable position if not imposing the impossibility of asserting a reasonable defense.

"Architects, engineers, and contractors have no control over an owner whose neglect in maintaining an improvement may cause dangerous or unsafe conditions to develop over a period of years. They cannot prevent an owner from using an improvement for purposes for which it was not designed. Nor can they prevent the owner of a building from making alterations or changes which may, years afterward, be determined unsafe or defective and appear to be a part of the original improvement.

"Your Committee believes that as a matter of good law, in fairness and equity to the architect, designer, engineer and builder, it is proper to enact legislation such as H.R. 6527, to establish a reasonable time limit within which suits for damages alleging defective or unsafe conditions, attributable to their actions, can be brought."

James M. Haughey
MONTANA TECHNICAL COUNCIL

CASE CITATIONS

(1) Imnan v. Binghamton Housing Authority
143 NE^{2nd} 835
(N.H. 1957)

(2) Tracy v. Finn Equipment Co.
310 F^{2nd}
(6th Cir. 1362)

(3) Schippes v. Levitt & Sons
207A^{2nd} 314
(N.J. 1965)

(4) e.g., Erhart v. Hummonds
334 S.W.^{2nd} 869
(Ark 1960)

Miller v. DeWitt
208 N.E.^{2nd} 249
(Ill. App. 1965)

ARCHITECTS & ENGINEERS PROFESSIONAL LIABILITY COST EXAMPLES

Architectural Firm:
Billings - $80,000.
Staff - 1 Principal, 4 Technical
Limit of Liability: $100,000.
Deductible: $3,000.

Year First Insured	1960 Premium	1961 Premium	1962 Premium	1963 Premium	1964 Premium	1965 Premium	1966 Premium	1967 Premium	1968 Premium	1969 Premium	1970 Premium	1971 Premium
1960	$275.40	$252.45	$298.50	$433.20	$438.60	$412.80	$387.00	$444.00	$444.00	$666.00	$799.00	$1,063.00
1961		$275.40	$328.35	$456.00	$464.40	$438.60	$412.80	$444.00	$444.00	$666.00	$799.00	$1,063.00
1962			$358.30	$501.60	$516.00	$464.40	$438.60	$473.60	$450.00	$666.00	$799.00	$1,063.00
1963				$456.00	$516.00	$516.00	$464.40	$503.20	$478.00	$681.00	$799.00	$1,063.00
1964					$516.00	$516.00	$516.00	$532.80	$506.00	$721.00	$822.00	$1,063.00
1965						$516.00	$516.00	$592.00	$533.00	$760.00	$866.00	$1,094.00
1966							$516.00	$592.00	$592.00	$799.00	$911.00	$1,151.00
1967								$592.00	$592.00	$888.00	$959.00	$1,211.00
1968									$592.00	$888.00	1,066.00	$1,276.00
1969										$888.00	1,066.00	$1,418.00
1970											1,066.00	$1,418.00
1971												$1,418.00

EXISTING STATUTES OF LIMITATIONS

STATE	YEAR OF PASSAGE	STATUTORY PERIOD
Alabama	1969	4 years
Alaska	1967	6 years
Arkansas	1967	5 years
California	1967	4 years
Colorado	1969	10 years
Delaware	1970	6 years
Florida	1967	12 years
Georgia	1968	8 years
Hawaii	1967	10 years
Idaho	1965	6 years
Illinois	1969	6 years
Indiana	1967	10 years
Kansas	1963	10 years
Kentucky	1966	5 years
Louisiana	1964	10 years
Maryland	1970	20 years
Michigan	1967	6 years
Minnesota	1965	10 years
Mississippi	1966	10 years
Nevada	1965	6 years
New Hampshire	1965	6 years
New Jersey	1967	10 years
New Mexico	1967	10 years
North Carolina	1963	6 years
North Dakota	1967	10 years
Ohio	1963	10 years
Oklahoma	1967	5 years
Oregon	1967	10 years
Pennsylvania	1966	12 years
South Carolina	1970	10 years
South Dakota	1966	10 years
Tennessee	1965	4 years
Texas	1969	10 years
Utah	1967	7 years
Virginia	1964	5 years
Washington	1967	6 years
Wisconsin	1967	6 years

STUDY OF DISTRIBUTION OF CLAIMS BY LENGTH OF TIME

Number of Years After Completion of Project Before Claim is Brought	Number of Claims	Percentage of Claims	Cumulative Percentage of Claims
1	215	37.7	
2	106	18.6	56.3
3	96	16.8	73.1
4	64	11.2	84.3
5	31	5.4	89.7
6	18	3.3	93.0
7	28	4.9	97.9
8	5	.8	98.7
9	3	.5	99.2
10	2	.4	99.6
11	0	-	-
12	0	-	-
13	1	.2	99.8
14	1	.2	100.0
15	0	-	-
	570	100.0	

66-114. Plans for public buildings to have seal and signature of architect—insurance coverage. All architectural plans and specifications for public buildings of the state of Montana, or any agency thereof, or of any county, city, or school district of the state, shall bear the seal and signature of the architect responsible therefor.

All architects shall have an adequate errors and omissions insurance policy when performing any supervisory acts relating to the construction of any public buildings, works or improvements of the state of Montana or any agency thereof, or of any county, city or school district of the state and such insurance shall be in force for three (3) years after the completion of the public buildings, works, or improvements.

History: En. Sec. 2, Ch. 109, L. 1943; amd. Sec. 1, Ch. 61, L. 1957; amd. Sec. 1, Ch. 167, L. 1961; amd. Sec. 1, Ch. 223, L. 1965; amd. Sec. 1, Ch. 131, L. 1967.

Collateral References

Responsibility of one acting as architect for defects or insufficiency of work attributable to plans, 25 ALR 2d 1054.

Architect's liability for personal injury or death from improper plans or design, 59 ALR 2d 1051.

Exhibit A

MEMORANDUM

FACT SHEET

SENATE BILL NO. 13

BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A PERIOD OF TEN (10) EARS WITHIN WHICH AN ACTION FOR DAMAGES ARISING OUT OF CERTAIN SERVICES OR WORK ON IMPROVEMENTS TO REAL PROPERTY MUST BE COMMENCED; AND PRO-IDING AN EFFECTIVE DATE"

The Need For A Statute of Limitations For Actions Arising Out of Design and Construction.

1. Presently there is no statute which effectively limits the commencement of an action arising out of the design, supervision or construction of an improvement to real property. It is possible for such an action to be commenced within three years after an injury occurs, which conceivably may be ten, twenty, or forty years after the construction is completed.

2. An architect or engineer may face a disastrous lawsuit at any time during his life, even after retirement. He may not be able to present an adequate defense, because of long lapse of time, absence of witnesses, loss of plans and records, fading of memories, and changing methods of construction and standards of design.

3. An architect or engineer must continue to carry liability insurance for his entire lifetime, because the only insurance available does not protect him against claims made after a year for which premiums are paid. This is fundamentally different from the insurance of a lawyer or a physician, which protects him against future claims as well as those made in a policy year.

4. The cost of liability insurance is prohibitively expensive. Premiums have increased by two and one-half times in the last five years. They are five times higher than in 1960. Only one nationwide company will write the insurance (Continental Casualty Company). Nine companies have withdrawn in the last ten years.

5. An architect or engineer who does public building work is required by law to carry "adequate liability insurance". But the only insurance available is not only prohibitive in cost but it is inadequate; and one group of engineers (Soils Engineers) cannot purchase liability insurance for any price.

6. Thirty-seven states have recognized the need for some final limit on the period in which a construction suit may be started, and have enacted specific statutes of limitation.

All of these statutes have been enacted since 1963, because the need for statutory limitation has developed only in the last ten to fifteen years. The pressing need has been caused by recent (since 1957) judge-made changes in law, which now expose the architect and engineer to suits by third parties with whom they have had no contractual relations.

I. A Ten-Year Limitation Period is more than reasonable and adequate.

1. Thirty-four states have limitation periods of ten years or less. Most of those are for six years or less, and the average is eight years. Senate Bill 13 provides for a ten-year period, with one additional period after an injury if it occurs in the tenth year.

2. Defects in design and construction normally will show up during or within a short time after construction. Failures which occur more than ten years after completion are those caused by inadequate maintenance, inspection or repair, and this is the responsibility of the owner, who is not affected by Senate Bill 13.

3. A study of 570 liability claims shows that 568, or 99.6%, were made within ten years after completion. We know of no Montana claims made more than five years after completion.

4. A final limitation on these suits is necessary because a case brought more than ten years after completion is almost impossible to defend. It is for that reason that the one insurance company left in the field will not insure against future claims. The work of the architect or engineer, unlike that of a lawyer or accountant, cannot be readily separated from that of the contractor, subcontractors, materials suppliers and from the inspection, maintenance and repair of the owner. In consequence an entirely blameless architect or engineer may be found liable for an injury actually caused by the fault of others, particularly in cases arising many years after completion. The extreme difficulty of defending these construction damage suits is shown by the fact that thirty-five percent of the money paid by the insurer goes to defense costs - investigation, lawyers' fees, court costs, etc. That figure is the highest in the whole insurance field.

5. Beyond ten years after completion the architect, engineer or builder should be entitled to assurance that he will not face a lawsuit which may bring financial disaster. Even a criminal is better treated in Montana today. A felon must be charged within five years (except for murder or manslaughter). Surely ten years should be ample time to hold the designer or builder responsible for his past work.

MONTANA TECHNICAL COUNCIL

By James M Haughey

DO PASS
DO NOT PASS
BE CONCURRED IN
BE NOT CONCURRED IN
BE ADOPTED
BE NOT ADOPTED

STANDING COMMITTEE REPORT

February 16, 1971

Bill Clerk

~~MR.~~ SPEAKER:

We, your committee on JUDICIARY

ring had under consideration SENATE Bill No. 13

BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A PERIOD OF TEN (10) ARS WITHIN WHICH AN ACTION FOR DAMAGES ARISING OUT OF CERTAIN RVICES OR WORK ON IMPROVEMENTS TO REAL PROPERTY MUST BE COMMENCED; D PROVIDING AN EFFECTIVE DATE."

spectfully report as follows: That SENATE Bill No. 13

~~DO PASS~~ BE CONCURRED IN

use Committee Report Form

Jeffrey J. Scott Chairman.

Signed by electors.

(3) The certificate must be signed by electors residing within the state and district, or political division in which the officer or officers are to be elected. Each elector signing a certificate shall add to his signature, his place of residence, and his business address.

5% or more of vote.

(4) The number of signatures must be five percent (5%) or more of the total vote cast for the successful candidate for the same office at the next preceding election.

Filing 90 days prior to election.

(5) The candidates for nomination shall file the certificates ninety (90) days prior to the date of the general election. *Certificates of nomination of candidates for municipal offices must be filed with the clerks of the respective municipal corporations not more than thirty (30) days and not less than fifteen (15) days previous to the day of election.*

Municipal offices. Filing not more than 30—not less than 15 days.

Independent candidates. Certificate requirements.

(6) A person who desires to run for president or vice-president as an independent candidate, must file a certificate of nomination with the secretary of state. The certificate must have the signatures of electors equal to five percent (5%) or more of the legal votes cast for governor at the next preceding general election. He must also nominate the required number of electors allowable to Montana and certify the names to the secretary of state.

Exceptions.

(7) This section shall not apply to nominations for special elections or to fill vacancies.

Effective immediately.

Section 2. This act is effective on its passage and approval.

Approved February 24, 1971.

CHAPTER NO. 60

An Act to Provide a Period of Ten Years Within Which an Action for Damages Arising out of Certain Services or Work on Improvements to Real Property Must Be Commenced; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Limitation on actions.

Section 1. Except as provided in sections 2 and 3 of this act, no action to recover damages (other than an

action upon any contract, obligation, or liability, founded upon an instrument in writing) resulting from or arising out of the design, planning, supervision, inspection, construction, or observation of construction of, or land surveying done in connection with, any improvement to real property shall be commenced more than ten (10) years after completion of such improvement.

10 years.

Exception.

Section 2. Notwithstanding the provisions of section 1 of this act, an action for such damages for an injury which occurred during the tenth year after such completion may be commenced within one (1) year after the occurrence of such injury.

Limitation does not affect responsibility.

Section 3. The limitation prescribed by this act shall not affect the responsibility of any owner, tenant, or person in actual possession and control of the improvement at the time a right of action arises.

"Completion" defined.

Section 4. As used in this act, the term "completion" means that degree of completion at which the owner can utilize the improvement for the purpose for which it was intended or when a completion certificate is executed, whichever is earlier.

Construction.

Section 5. Nothing in this act shall be construed as extending the period prescribed by the laws of this state for the bringing of any action.

Effective January 1, 1972.

Section 6. In order to provide a reasonable period for commencement of any action for which a right of action has heretofore accrued, this act shall be effective January 1, 1972.

Approved February 27, 1971.

CHAPTER NO. 61

An Act Providing for the Creation of a Confidential Relationship Between Student and School Personnel.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. Section 93-701-4, R.C.M., 1947, is amended to read as follows:

"93-701-4. **Persons in certain relations cannot be exam-**